



U.S. DEPARTMENT OF JUSTICE
Federal Bureau of Prisons
Metropolitan Correctional Center

150 Park Row

New York, New York 10007

September 4, 2020

The Honorable Edgardo Ramos
United States District Judge
Southern District of New York
Thurgood Marshall United States Courthouse
40 Foley Square
New York, NY 10007

Re: *Cesar Fernandez-Rodriguez, et al. v. Marti Licon-Vitale*
Civil Action No. 20 Civ. 3315 (ER)

Dear Judge Ramos:

As promised in my May 29 letter to the Court, please find the following information:

- The number of inmates tested for COVID-19 and the number who have tested positive since the last report(August 14); **412 tested and 3 positives (we are still awaiting results for 21 inmates).**
- The number of inmates who MCC medical staff has determined to have symptoms of COVID-19 since the last report and confirmation contact tracing investigations have been completed (or are underway) for each of them; **All positive inmates have been asymptomatic. We had one inmate who reported potential symptoms and was screened. We tested him twice and have ruled out COVID-19.**
- The current number of inmates in isolation for suspected or confirmed COVID-19 infection; **3**
- The number of staff who have informed MCC they tested positive for COVID-19 since the last report, and confirmation contact tracing investigations have been completed (or are underway) for each of them; **0**
- Confirmation handwritten and electronic sick call requests are being reviewed daily and inmates are being timely scheduled for medical appointments based on medical need and staff resources; **Yes and I continue to verify this is happening.**

Cesar Fernandez-Rodriguez, et al. v. Marti Licon-Vitale
 August 14, 2020
 Page 2

- Confirmation hygiene and cleaning supplies have been distributed in all inmate units since the last report; **Yes**
- The number of MCC inmates released pursuant to: compassionate release, full term release, good conduct time release, and MCC referrals to home confinement or a residential reentry center since the last report; **16**
- A redacted list of inmates who have been denied home confinement, and the justifications for those denials, since the last report. **0**

In addition to providing my standard updates, I wish also to address the letter sent by petitioners' counsel to the Court, as well as to provide the Court and parties with a few updates regarding MCC procedures relating to COVID. I cannot agree, however, with petitioners' request that I supplement my regular letters to the Court with numerous additional items, as explained below.

With regard to temperature and symptom checks for inmates, MCC's processes changed somewhat in June. While inmates in isolation for positive COVID tests are still screened twice a day, there have been some changes with regard to other inmates. There are a few different subgroups of inmates in quarantine and they are not all screened on the same schedule. Existing inmates who are housed in units where other inmates have tested positive are screened daily, as are inmates who have left the prison and returned (for example, for a court appearance or to go to the hospital). Newly admitted inmates, however, are now screened only upon entry and at the end of their quarantines, and so are inmates who are being quarantined in advance of release or transfer. Finally, we are no longer doing regular (e.g., weekly) temperature and symptom screenings in non-quarantine units. Specifically with regard to Unit 11 South, while that particular unit has been under quarantine for the past two months (because some asymptomatic inmates have tested positive and have been placed in isolation), and have thus been screened daily, these screenings will end at the conclusion of the quarantine.¹ These changes may explain the comments from specific inmates regarding the screenings they have undergone. MCC medical staff have indicated to me these screenings are happening on the prescribed schedule and records kept—though, of course, the occasional gap may well have occurred. Inmates are being individually screened as opposed to being asked “how are you feeling” to a group, although we are still waiting on responses from a few practitioners to ensure they are doing this correctly. We have implemented the practice of the health practitioner on each shift sending an email to the Health Services Administrator, the Associate Warden overseeing Health Services and myself confirming they have completed the enhanced screening on the quarantine and isolation units. Additionally, they have been reminded to enter their screening logs into BOP's electronic medical records system.

MCC's COVID testing protocols are also slightly different now. In order to exit quarantine (of any variety), each inmate must test negative for COVID using a commercial lab. This sometimes has the effect of prolonging the quarantine period as we await the commercial lab test results. We now often use the Abbott rapid test at the beginning of quarantine periods.

¹ Relatedly, I note that the current inmate population of Unit 11 South is 70 inmates out of a capacity of 156 inmates.

Cesar Fernandez-Rodriguez, et al. v. Marti Licon-Vitale
August 14, 2020
Page 3

All isolated inmates are housed in a separate unit designated for that purpose—Unit 3. Space permitting, some quarantined inmates are housed in Unit 3 as well. Newly admitted inmates and inmates who are returning from outside visits or awaiting release are housed in separate tiers in Unit 5 South. For a few weeks recently, approximately fifteen quarantined inmates were housed in the Special Housing Unit (“SHU”) because there was no room available for them in Units 3 and 5 South that could be used for this purpose due to ongoing quarantines. As of last week—as soon as it was possible—we have transferred these inmates to quarantine on 5 South or elsewhere, except for one inmate who remained in the SHU for disciplinary reasons. I remain committed to using the SHU for this purpose only as a last resort, though I note there are limited options available when the relevant quarantine units are full because quarantined inmates cannot be housed in general population units.

MCC’s current protocols for contact tracing for COVID-positive staff and inmates are as follows. Whenever an inmate tests positive, his entire unit is placed under quarantine and a memorandum is sent to all staff notifying them that an inmate in that unit tested positive and how long the inmate has been at the institution. Whenever a staff member tests positive, a memorandum is sent to all staff notifying them of the occurrence. The specific department is also notified telephonically. Staff are still screened daily upon entry to the building and have been repeatedly advised where they can get tested.

Finally, with respect to petitioners’ proposal that I supplement my letters with additional information, I cannot agree to do that at this time. Putting together these letters every two weeks is very time consuming for me and my staff (in addition to other information MCC provides to other courts). Because my priority is for my staff to perform their duties (including their COVID-related duties), I think it is not warranted to require them to spend even more of their limited time assisting in the preparation of these letters on a biweekly basis. This is not to say that petitioners cannot learn more about the steps MCC is taking. I understand that we are currently collecting documents and information in response to petitioners’ discovery requests, which should contain much of the information they are seeking. Should additional questions arise about specific topics, I or my staff may be able to provide information as appropriate, but not updated every two weeks.

My next update will be on September 18, 2020. I thank the Court for its attention to this significant matter.

Respectfully submitted,

/s/

M. Licon-Vitale
Warden
MCC New York